

**A.M., Appellant**

**U.S. POSTAL SERVICE, POST OFFICE,  
San Antonio, TX, Employer**

### Case Submitted on the Record

<sup>3</sup> The Board notes that OWCP received additional evidence following the May 14, 2020 decision. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On November 12, 2015 appellant, then a 57-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral hand injuries due to factors of his federal employment, including repetitive work duties which required grasping mail and parcels to case and deliver mail. He noted that he first became aware of his condition on January 5, 2015 and realized its relation to his federal employment on September 8, 2015. Appellant did not stop work. OWCP accepted the claim for bilateral carpal tunnel syndrome and bilateral thumb trigger finger. It paid appellant wage-loss compensation for intermittent periods of disability.

On November 14, 2018 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In support of his schedule award claim, appellant submitted a January 24, 2017 report from Dr. Mario Bustamante-Montes, a Board-certified orthopedic surgeon and anatomic and clinical pathologist. Dr. Bustamante-Montes opined that, pursuant to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),<sup>4</sup> Table 15-23, page 449, appellant had five percent permanent impairment of each upper extremity due to appellant's accepted bilateral carpal tunnel syndrome and trigger finger. He explained that the rating was based on a *QuickDASH* disability score of 50 percent, a grade modifier for clinical studies (GMCS) of 1 for test findings of conduction delay, a grade modifier for functional history (GMFH) of 3 for history of constant symptoms, and a grade modifier for physical examination (GMPE) of 1 for physical examination findings. Dr. Bustamante-Montes concluded that appellant had a net adjustment of 0, equaling five percent permanent impairment of each upper extremity.

OWCP referred appellant's medical record to Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA). In a report dated February 4, 2019, Dr. Harris advised that he agreed with Dr. Bustamante-Montes' assessment of five percent left upper extremity permanent impairment and five percent right upper extremity permanent impairment under the standards of the sixth edition of the A.M.A., *Guides*.

By decision dated June 18, 2019, OWCP granted appellant a schedule award for five percent right upper extremity permanent impairment and five percent left upper extremity permanent impairment. The award was for 31.2 weeks and the period of the award ran from January 22 through August 28, 2017.

On October 21, 2019 appellant requested reconsideration. In support of his request, he submitted physical therapy notes dated April 17 and 27, 2020, a functional capacity evaluation (FCE) referral, and a December 13, 2019 manual muscle strength wrist examination.

By decision dated May 14, 2020, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

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<sup>4</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## **LEGAL PRECEDENT**

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.<sup>5</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>6</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>7</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>8</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>9</sup>

## **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim, pursuant to 5 U.S.C. § 8128(a).

Appellant's request for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law or advance a new and relevant legal argument not previously considered. Thus, he is not entitled to a review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

With his request for reconsideration, appellant provided physical therapy notes, a referral for an FCE, and a manual muscle wrist strength examination report. However, this evidence does not contain an evaluation of permanent impairment under the protocols of the sixth edition of the A.M.A., *Guides*. Therefore, it does not address the underlying issue of the present case, *i.e.*, whether he submitted sufficient medical evidence to establish increased employment-related permanent impairment of a scheduled member or function of the body. The Board has held that the submission of evidence or argument which

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<sup>5</sup> 5 U.S.C. § 8128(a); *see J.D.*, Docket No. 19-1757 (issued April 15, 2020); *L.D.*, Docket No. 18-1468 (issued February 11, 2019); *see also V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

<sup>6</sup> 20 C.F.R. § 10.606(b)(3); *see J.D.*, *id.*; *L.D.*, *id.*; *see also L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>7</sup> *Id.* at § 10.607(a). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of the merit decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4(b).

<sup>8</sup> *Id.* at § 10.608(a); *see also M.S.*, 59 ECAB 231 (2007).

<sup>9</sup> *Id.* at § 10.608(b).

does not address the particular issue involved does not constitute a basis for reopening a case.<sup>10</sup> As such, appellant is not entitled to further review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).<sup>11</sup>

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>12</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

### **ORDER**

**IT IS HEREBY ORDERED THAT** the May 14, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 30, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>10</sup> *E.J.*, Docket No. 19-1509 (issued January 9, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>11</sup> *Supra* note 7 at § 10.606(b)(3).

<sup>12</sup> *See D.M.*, Docket No. 18-1003 (issued July 16, 2020); *D.S.*, Docket No. 18-0353 (issued February 18, 2020); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).